

Message Text

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TO AMEMBASSY CANBERRA IMMEDIATE

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FOR AMBASSADOR FROM ALDRICH

E.O. 11652: N/A

TAGS: ICRC, PARM

SUBJECT: LAWS OF WAR CONFERENCE--WARS OF LIBERATION

REF: CANBERRA'S 1451

1. REGRET I WAS TOO CONCISE IN MY EARLIER MESSAGE. THE IMPORTANT POINT IS THAT, OF ALL WESTERN COUNTRIES, ONLY NORWAY AND AUSTRALIA HAVE EMBRACED WARS OF NATIONAL LIBERATION AS A SPECIAL CATEGORY ENTITLED TO SPECIAL PROTECTION UNDER THE LAWS OF WAR. IN MY VIEW THIS IS THE MOST DANGEROUS TENDENCY IN THIS CONFERENCE-- THE TENDENCY TO EQUATE THE PROTECTIONS TO WHICH A PERSON IS ENTITLED TO THE PERCEIVED JUSTNESS OF HIS CAUSE. THE OBVIOUS COROLLARY, ON WHICH THE DRV RELIED, IS THAT A PRISONER RECEIVES NO PROTECTION IF HIS CAUSE IS UNJUST, E.G., IF HIS COUNTRY IS SEEN BY THE DETAINING POWER TO BE GUILTY OF AGGRESSION.

2. THE UNDERLYING CONCEPT OF THE GENEVA CONVENTIONS IS
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THAT ALL VICTIMS ARE PROTECTED BY THE LAW WITHOUT REGARD

TO THE JUSTNESS OF THE CAUSE FOR WHICH THEY FIGHT. TO INCLUDE THE JUST WAR CONCEPTS IN THE NEW AGREEMENTS, AS THE AUSTRALIAN PROPOSAL WOULD DO, IS TO ENSURE THAT LESS HUMANITARIAN PROTECTION WILL PREDICTABLY BE ACCORDED IN THE FUTURE, BECAUSE ONE RARELY SEES ONE'S ENEMY AS FIGHTING FOR A GOOD CAUSE.

3. GENEVA CONVENTIONS APPLY TO INTERNATIONAL ARMED CONFLICTS, WHICH IS DEFINED AS THOSE BETWEEN TWO OR MORE STATES. DRAFT PROPOSAL WHICH AUSTRALIA HAS COSPONSORED WITH ALTERIA, CAMEROON, EGYPT, IVORY COAST, KUWAIT, LIBYA, NIGERIA, NORWAY, PAKISTAN, SUDAN, SYRIA, DEMOCRATIC YEMEN, YUGOSLAVIA, AND ZAIRE, WOULD DEEM ALL "ARMED STRUGGLES WAGED BY PEOPLES IN THE EXERCISE OF THEIR RIGHT OF SELF-DETERMINATION" TO BE INTERNATIONAL ARMED CONFLICTS TO WHICH ALL THE RULES APPLICABLE TO INTERNATIONAL WARS PERTAIN, EVEN WHEN THEY ARE, IN FACT, MERE REBELLIONS OR CIVIL WARS TO WHICH ONLY CERTAIN MUCH MORE LIMITED HUMANITARIAN RULES SHOULD APPLY. HOWEVER MERITORIIIOUS SOME OF THESE REBELLIONS MAY BE, IT SEEMS DOUBTFUL THAT ALL THE CAPTURED REBELS SHOULD BE ENTITLED TO PW TREATMENT. MUCH MORE IMPORTANT, HOWEVER, IS THE PRINCIPLE INVOLVED. FROM MY POINT OF VIEW, THE AUSTRALIAN COSPONSORSHIP IS A SELLOUT OF THE PRINCIPLE THAT THE LAW APPLICABLE TO THE CONDUCT OF HOSTILITIES AND THE TREATMENT OF PRISONERS APPLIES WITHOUT REFERENCE TO SUBJECTIVE CRITERIA, SUCH AS THE JUSTNESS OF ONE'S CAUSE. I HOPE YOU WILL BE ABLE TO MAKE THE GOA SEE THE DANGER IN SUCH A SELLOUT. DALE

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